

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35492

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 515
	)	
Plaintiff-Respondent,	)	Filed: June 25, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
RICHARD BOLTIZAR,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Judgment of conviction for felony driving under the influence, affirmed.

Leo N. Griffard, Jr. of Griffard Law Offices, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

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LANSING, Chief Judge

Richard Boltizar appeals from his judgment of conviction entered pursuant to a conditional plea to felony driving under the influence (DUI). We affirm.

I.

BACKGROUND

Boltizar was convicted of misdemeanor DUI in Canyon County on February 11, 1998 and again in Ada County on February 12, 1998. Under the law in effect at those times, a third DUI offense within five years could be charged as a felony. Idaho Code § 18-8005(5) (1997). At the time of his convictions, Boltizar was given warnings to that effect pursuant to I.C. § 18-8005(1)(c).

In 2006, the Idaho legislature amended I.C. § 18-8005(5) to provide that a third offense within *ten* years could be charged as a felony. On September 24, 2007, Boltizar again drove while intoxicated. Because of his two prior DUI convictions within ten years, he was charged with felony DUI. Boltizar filed a motion to have the district court remand his case to the

magistrate court as a misdemeanor. The court denied this motion and Boltizar eventually pleaded guilty to felony DUI, reserving his right to appeal the court's denial of his motion to remand. He now contends that the district court erred in denying that motion.

## II.

### ANALYSIS

Boltizar asserts that the penalty notifications given to him in 1998 pursuant to I.C. § 18-8005(1)(c) constituted a contract between himself, the state executive branch, and the state judicial branch and that the state legislature's amendment to I.C. § 18-8005(5) was an abrogation of that contract. He argues that the abrogation therefore violated his constitutional rights against governmental impairment of contracts and also violated the constitutional principle of separation of powers.

For the legislature's amendment of I.C. § 18-8005(5) to have been an abrogation of Boltizar's alleged contract, there must have first been a contract. Boltizar looks to *State v. Nickerson*, 121 Idaho 925, 828 P.2d 1330 (Ct. App. 1992), for his assertion that the penalty notifications created a contract. Specifically, he asserts that because the words "condition precedent" were used in *Nickerson* in reference to notification of the enhancement provisions of I.C. § 18-8005(5) (1997), *Nickerson*, 121 Idaho at 927, 828 P.2d at 1332, and because those words are sometimes employed in reference to contractual terms, *Nickerson* implies that the enhancement notifications in Boltizar's prior DUI cases created contracts between him and the State.

Boltizar's analysis is meritless. As we stated recently in *State v. Lamb*, 147 Idaho 133, \_\_\_, 206 P.3d 497, 501 (Ct. App. 2009):

A trial court's advisement of the risk of future penalties under a recidivist statute is a *warning* designed to deter the defendant from committing future offenses, not a *promise* that puts restraints on future prosecutions. *See State v. Nickerson*, 121 Idaho 925, 928, 828 P.2d 1330, 1333 (Ct. App. 1992).

(Emphasis in original.) The notifications given to Boltizar were warnings, not contracts. Since there was no contract, there can be no abrogation of contractual rights. Boltizar's argument that the legislative amendment of I.C. § 18-8005(5) somehow violated his contractual rights therefore fails.

The order of the district court denying Boltizar's motion to remand is affirmed.

Judge GUTIERREZ and Judge GRATTON CONCUR.